

EXHIBIT F

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -
4 THOMAS A. EAMES, on behalf of
5 themselves and all others : CIVIL ACTION
6 similarly situated; ROBERTA L. :
7 EAMES, on behalf of themselves :
8 and all others similarly :
9 situated; TAMMY EAMES, on behalf :
10 of themselves and all others :
11 similarly situated; :
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Plaintiffs,

v

NATIONWIDE MUTUAL INSURANCE
COMPANY,

Defendant.

NO. 04-1324 (KAJ)

Wilmington, Delaware
Tuesday, September 13, 2005 at 9:30 a.m.
TELEPHONE CONFERENCE

BEFORE: HONORABLE KENT A. JORDAN, U.S.D.C.J.

APPEARANCES:

MURPHY, SPADARO & LANDON
BY: JOHN S. SPADARO, ESQ.

Counsel for Plaintiffs

SWARTZ CAMPBELL, LLC
BY: NICHOLAS E. SKILES, ESQ.

and

Brian P. Gaffigan
Registered Merit Reporter

1 level management documents are stored. I'm not talking
2 about e-mails that have been -- yes, I know that they're
3 going to search e-mails from last week and they're going
4 to limit it to people who are connected to Delaware. That
5 search is calculated to fail. It has almost no chance of
6 discovering the documents that we're looking for.

7 THE COURT: Now, stop. I read that in your
8 letter. Then I read their response which said we're not
9 limiting this geographically. You said they're limiting to
10 people in Delaware. They said expressly we're not doing
11 that. Where is the disconnect? How come you think they're
12 doing it when they said in correspondence back to you on
13 September 8th we're not doing that? And I assume they'll
14 reiterate that on the call. I don't know. Mr. Cheyney, are
15 you limiting this?

16 MR. CHEYNEY: No, Your Honor.

17 THE COURT: Okay. Mr. Spadaro, why do you
18 believe they're doing it when they say they're not going to
19 do it?

20 MR. SPADARO: Well, Your Honor, if you look at
21 the list of custodians they have given us, 90 percent of
22 that list are agents, insurance agents. And I recognize
23 the names: Broadbent, Muncie, Deaton, Truitt. These are
24 insurance agents that we subpoenaed in this case. They're
25 Delaware insurance agents. That's a list. That list

1 Mr. Spadaro, who could speak for himself if we had time but
2 we don't, would say that is because you are looking in the
3 wrong place.

4 So here is what is going to happen. You guys
5 are going to have this meeting. And, of course, I hope it's
6 not too much to expect that it will be thoroughly
7 professional, that everybody will be under control, that
8 there won't be any table pounding or finger pointing or
9 sarcasm or anything else and that there will be an open
10 discussion of the Nationwide computer system. If it needs
11 to be done under a protective order, we've got one, I think.

12 MR. CHEYNEY: We submitted one back to him that
13 said it was acceptable to us. He then said he had some
14 issues with our reply.

15 MR. OESTERLING: Well, and if I could interject?
16 The Nationwide system, we're talking hundreds of databases.
17 Now, what we're trying to zero in on is what system or
18 systems could potentially have relevant evidence.

19 THE COURT: What I'm telling you folks on the
20 Nationwide side is it's not good enough for you to say to
21 me this is what we've done. The way to cut this issue off,
22 which I am insisting you do, is to explain to Mr. Spadaro
23 what the Nationwide system is like. Have the technical
24 people in the room, if you have to, Mr. Oesterling. Don't
25 have a meeting where he's got questions without having the

1 people there who can answer him. Have a discussion about
2 the system. All right? Because I don't want to keep
3 talking to you guys about "they're setting it up to fail,
4 this that and the other. If you only listen to me, you will
5 see that they're lying sacks." And I don't want to hear
6 from you "that's not true, that's not true." What I want
7 is for him to be able to say "I found out this and that
8 and the other thing about this system and we came to some
9 resolution" or I want you to be able to say, "judge, we
10 gave -- we had an X-hour conversation in which we laid out
11 the entirety of our documents storage and retrieval system
12 and asked him and made proposals about how to go forward,
13 and he made counterproposals and this is why it was
14 reasonable or wasn't reasonable" because then I'm in a
15 position to say "is cost shifting appropriate?"

16 Right now, I can't do that because while I
17 disagree flatly, as I've said in this call, with the
18 hyperbole of Mr. Spadaro's letter that nothing has happened
19 or he knows nothing, I agree with him that we're a month
20 plus after the last call and still there is an inadequate
21 degree of cooperation and conversation so that we can get
22 past the issue of e-discovery into the discovery process
23 itself in a way that includes the plaintiff meaningfully.

24 So you guys have your meeting as described, but
25 do you understand both sides what I'm telling you to do?

1 helpful. You've guys have spent I don't know how much time
2 and money writing me letters, saying how unreasonable the
3 other side is. I mean I'm not unsympathetic to you,
4 Mr. Spadaro. You say "it turns into a referendum on me."
5 That's now how you view this but I have to say candidly on
6 this record you are so wrapped up in the emotion of this
7 case, it's just screaming at me over the phone. The heat
8 waves are coming off the receiver at this end. Both sides.
9 The sarcasm is evident in spots in the correspondence from
10 the other side. Your intensity is evident.

11 You folks have got to get your emotions under
12 control. And I can't be the one who is holding your hand
13 through this. I have got too many other people with
14 legitimate complaints and disputes that I can't have your
15 issues swamp me on a monthly basis for time to read your
16 letters, digest your problem, which I do, and then get on
17 the phone with you and try to sort it out.

18 So both sides, I want a discussion from you
19 about who would be a good neutral if this happens again,
20 because if it happens, this is the last free bite. Next
21 time, we're going and I'm bringing somebody into the mix.
22 And in the first instance, we'll be splitting it 50/50 but
23 I'm going to be asking that person "who is a bad actor
24 here?" And if they say "you know what? I think Nationwide
25 really is jerking them around," you are going to pay the

1 full freight; not 75 percent, the whole wad.

2 Does everybody understand what I'm trying to get
3 across to you? Mr. Cheyney?

4 MR. CHEYNEY: Yes, Your Honor.

5 THE COURT: Okay. Mr. Oesterling, I'm glad to
6 have you in the mix. I know you are in-house with
7 Nationwide but I'm hoping against hope that you will be a
8 force for reason in the course of these discussions.

9 MR. OESTERLING: Your Honor, if I could make a
10 suggestion to make our meeting more productive? If there
11 are specific questions, technical questions that I might
12 not be able to answer in a face-to-face, I could do some
13 research prior to our meeting to make sure that it is
14 productive.

15 THE COURT: Okay. Well, that's a great idea.
16 And, Mr. Spadaro, you let them him know that.

17 And here is my last piece of advice for you
18 before I hang up because I've got people on hold. I expect
19 there to be more phone calls; more phone calls and fewer
20 e-mails. Pick the phone up and speak to each other. If you
21 need to make a record in e-mail afterwards that you feel
22 they're so completely absent any trust, then you write your
23 confirming e-mail, but pick the phone up and speak to each
24 other, okay? I think at least 75 percent of your problem is
25 you are so busy each side making a record that you are not